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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/681,472

Applicant(s)

URMAN ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7-16 is/are rejected.
- 7) ☒ Claim(s) 3,4 and 6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10-8-03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 17-18, drawn to a process of forming a bag, classified in class 493, subclass 213.
 - II. Claims 1-16, drawn to a package, classified in class 383, subclass 6.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are related as process of making and product made.

The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the package of claim 1 requires attaching a handle at opposite sides of the package not required by the process, which requires forming the handle from the bag material.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Michael Shippey on April 6, 2005 a provisional election was made without traverse to prosecute the invention of Group II, claims 1-16.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 17-19 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "one or more slits, holes or other small openings for ventilation" as set forth in claim 13 and a square bag with the length and width

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having the same dimensions as set forth in claim 8 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to because figure 5 fails to show the handle as indicated in the "brief description of the drawings" at page 7 and the pocket 23 is opened at the bottom thereof.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

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renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "or pressure strip" in claim 11 and "the bag has a weight tolerance of at least approximately 5 to 6 pounds" in claim 9.

8. The disclosure is objected to because of the following informalities:

- "bottom-most layer" is used with reference characters 11 and 12;
- reference character 13 is used with both "bag", "bottom-most layer", and "extended flap";
- "bag" is used with reference characters 12 and 13;
- reference character 12 is used with "bag", "opening", and "bottom-most layer"; and
- "bag" is used with reference characters 60 and 61.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. Claims 2, 10, 11 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "such slices" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.

What is intended by "optionally"? It is unclear if the bag is microwaveable or not.

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In claim 14, the bottom layer is set forth as extending to ½ inches to 3 inches longer than the top layer. This suggests the bottom layer could also extend less than ½ inch. Is that applicant's intent?

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1,5,7,11-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Skamser (US 4,578,814).

Disclosed is a transportable packaging system for the horizontal storage and transport of food and other products, comprising a bag **10** that is approximately square or rectangular in shape, and comprised of a plurality of attached layers **14,16**, with the first and second layer being side-seamed to form the bottom and top sides of the bag and with a handle that is attached integrally at opposite ends to the side seams of the bag such that it crosses the top of the bag at approximately the center, wherein said handle is in the form of an "X" with arms **24** extending approximately from the center of the top side, and ending at opposite sides of the bag, suitable sealing and resealing fasteners **60,62** at the open seam, such as an adhesive, interlocking, or pressure strip by which the bag can be opened and resealed, and the bag having no exterior pocket. To the degree claimed, vent holes are located at the junction of the lower layer overlapping the top layer at the opened end.

Claim Rejections - 35 USC § 103

12. Claim 1,7-9,11, and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sunley (US Des. 372,858).

Disclosed is a transportable packaging system for the horizontal storage and transport of food and *other products*, comprising a bag that is approximately square or rectangular in shape, with the first and second layer being side-seamed to form the bottom and top sides of the bag and with a handle that is attached integrally at opposite ends to the side seams of the bag such that it crosses the top of the bag at approximately the center, and suitable sealing and resealing fasteners at the open seam, such as an adhesive, interlocking, or pressure strip by which the bag can be opened and resealed. Sunley is silent regarding the composition of the bag material and thickness, the length of the fold over flap, and a specific weight tolerance for the bag.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bag of Sunley of a plurality of attached layers and to select the material from a group of well known materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Regarding claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bag of a material thickness of 0.10 - 3.0 millimeters per layer, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bag having sides of 5 to 36 inches in length and width, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Doing so accommodates a greater volume of product inside the bag.

Regarding claim 9, the bag inherently has a weight tolerance of at least 5-6 pounds since it is intended to hold sand. Alternatively, it would have been obvious to one having ordinary skill

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in the art at the time the invention was made to form the bag with a weight tolerance of at least 5-6 pounds to allow for use with sand.

Regarding claim 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bottom layer to extend $\frac{1}{2}$ inch to 3 inches beyond the top layer to form a closure flap, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

13. Claims 8-10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skamser.

Regarding claim 8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bag having sides of 5 to 36 inches in length and width, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Doing so accommodates a number of desired pizza boxes in the bag as well as various sizes of pizza boxes.

Regarding claim 9, the bag of Skamser is inherently capable of having a weight tolerance of at least 5-6 pounds depending on the material used for the desired number of pizza boxes to be held in the bag simultaneously. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the bag of Skamser to have a weight tolerance of at least 5-6 pounds. Doing so accommodates a plurality of pizza boxes in the bag compartment simultaneously.

Regarding claim 10, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bag of Skamser of material selected from a group of well known materials capable of at heat tolerance of at least 200° F for at least 60 minutes, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

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Regarding claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bag of a material thickness of 0.10 - 3.0 millimeters per layer, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Allowable Subject Matter

14. Claims 3,4 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claim 2 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

17. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

18. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

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I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature_____

Date_____

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (571) 272-4549.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
May 18, 2005



Robin A. Hylton
Primary Examiner
GAU 3727